No. 13,692

IN THE

United States Court of Appeals
For the Ninth Circuit

DAVID DON SCHUMAN,	
	Appellant,
vs.	
UNITED STATES OF AMERICA,	
	Appellee.

Appeal from the United States District Court for the Northern District of California, Southern Division.

APPELLEE'S PETITION FOR A REHEARING.

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To the Honorable William Denman, Chief Judge, and to the Honorable Associate Judges of the United States Court of Appeals for the Ninth Circuit:

JURISDICTION.

Jurisdiction is invoked under Rule 25 of the Rules of the Court of Appeals for the Ninth Circuit.

PRELIMINARY STATEMENT.

When a case has been submitted for decision ordinarily the judgment of the Court of Appeals should

be accepted or appeal made to higher authority. The reasons for this are two-fold. First, the Court of Appeals has not reached its decision without thought and deliberation and further argument will probably not change minds committed to decision. Second, the Court probably feels itself bound by the Supreme Court to which appeal may be made directly.

In the instant case, however, this Court did not have the benefit (whatever benefit that might be) of a brief by the United States on the problems raised by the *Dickinson* case which was decided after briefs were filed.

Immediately after a skirmish is lost there is a very human tendency to think that the war is over. When the Supreme Court rules on a subject, the natural inclination is to think that law has taken an abrupt change of direction. More sober reflection may, however, indicate that such is not the case.

The United States is requesting this Court to take a second look at the problem before it. It makes this request not in the spirit of a poor loser, but because of the grave consequences this decision will have on the defense of the United States.

Few American boys want to go into the service. Army life is the very antithesis of the democratic living for which the average young man is trained. In time of war the majority is impelled by patriotism to submit to the disagreeable necessity. In time of peace, however, few people have the inclination to serve the tiresome lonely years which are required if the United

States is to remain strong. Each searches for an honorable way to avoid serving. Religion is an obvious and natural place to turn. The decision of this Court makes it the refuge from the duties which living in the modern world demands.

In a broad sense every American is a conscientious objector. War and regimentation are un-American. What person does not feel that "war, in any form," is wrong and who would suggest that feeling is not also held by the churches. A line must be drawn between the natural abhorrence to war of every American and every Christian, and the beliefs which Congress intended should be grounds for exemption. The necessities of this country cannot and should not be defeated by empty ordination or the simple affirmation of conscientious scruples.

David Don Schuman is a normal American college student. He has avoided the draft by a few hours' street solicitation and the normal activities of a member of "The Christian Endeavor" or a devout Catholic layman. All other American boys will not follow his example, but the substantial number who will might cripple the Selective Service Act. Most religions require strenuous and lengthy study before a man may become a minister; Jehovah's Witnesses do not. To a substantial number of men a part time activity as a minister of even an unpopular sect, is preferable to lonely duty in an Aleutian or Korean outpost. This Court's decision gives exemption from the draft to any boy who applies for and is granted the slip of paper

which constitutes God's ordination for preaching, as far as Jehovah's Witnesses are concerned. This decision gives exemption to anyone on the mere claim of opposition to war. This Court has given the honorable way out that most young men are seeking. Rest assured, they will not be slow in taking advantage of it.

QUESTIONS.

The problems in this case fall into two categories:

(1) Was there basis in the record to conclude that David Don Schuman had not satisfied his burden of proving that he was exempt from service as a minister?

(2) Was there basis in the record to find that Schuman had not satisfied his burden of proving he was exempt from service as a conscientious objector?

ARGUMENT.

I.

DAVID DON SCHUMAN IS NOT A "PRESIDING MINISTER".

This Court's opinion says that the evidence in the file tends to prove that the defendant's "position in the Witnesses sect is that of a 'presiding minister' or 'overseer.' " If this were true the United States would not be urging that a rehearing be granted.

This Court realizes that one of the conditions to exemption as a minister is that the defendant be

"recognized as a minister by the other members of the sect." We presume that when the term "presiding minister" was used in the opinion, the Court had reference to *Dickinson v. United States,* decided November 30, 1953. The Supreme Court there described Dickinson's status as follows: "As of January 1950 Dickinson changed his residence in order to assume the role of 'company servant' or *presiding minister* of the Coalinga, California 'company' which encompassed a 5400 square mile area." (Emphasis added.) The Court described Dickinson's ministerial activities as a presiding minister in this way: "A substantial portion of this time was spent conducting three to four meetings each week of the 'company' or congregation at a public hall in Coalinga. Dickinson arranged for and presided over these meetings, usually delivering discourses at them."

The Supreme Court and this Court when using the term "presiding minister" obviously have reference to the individual who is the leader of his particular congregation.

The only evidence that Schuman's position was of this character must be gathered from his personal appearance before the Selective Service Board. There the following occurred:

> '"Mr. Dooley. You are asking us to defer you on the grounds you are an ordained minister. Do you have a church assigned to you?
>
> Registrant. I am an overseer. If I may present this to the board. (Registrant presented

written statement, date September 30, 1951, stating he serves as a presiding minister.)

Mr. Dooley. This is dated September 30, 1951 on the letter-head of San Francisco Mission Unit of Jehovah's Witnesses, or 23rd and Shotwell, and has been notarized.

Registrant. May I have that in my file, please.

Statement was stamped as having been received October 8, 1951 and placed in registrant's file." (File 92).

The Court will notice that a written statement is there referred to. The following is a copy of this statement:

"San Francisco Mission Unit of
Jehovah's Witnesses
23rd & Shotwell Streets, San Francisco 10, California
Valencia 4-8425
September 30, 1951

Affidavit:

The following statement is made by Verne G. Reusch, presiding minister of the San Francisco Mission District congregation of Jehovah's Witnesses, on behalf of David Schuman. I know David Schuman to be an associated and active minister in the Mission District congregation of Jehovah's Witnesses to be enrolled in the Theocratic Ministry School at our local headquarters of the above address. I have noted his regular attendance, his application to his studies, and the practical use of his training in the work of preaching the Gospel.

Due to the diligence thus shown, he has been found qualified to serve as a presiding minister

in one of the regularly conducted Bible study groups within the local congregation's territory.

/s/ Verne G. Reusch
Presiding Minister

Subscribed and sworn to before me this 1st day of October, 1951.

/s/ Barbara Alexa,
Notary Public in and for the City and County of San Francisco, State of California".

This letter is marked "Received by Local Board No. 38 on October 8, 1951." (File 88).

It is to be noted that this affidavit is signed by Verne G. Reusch, *Presiding Minister* of the San Francisco Mission District Congregation of Jehovah's Witnesses. Mr. Reusch establishes three facts: (1) That Schuman is a member of the Mission District Congregation; (2) that he is enrolled in a theocratic ministry school;[1] (3) that he is serving as a presiding minister of a bible study group within the local congregation's territory. Presumably a bible study group encompasses small numbers of the main congregation. Schuman occupies a position probably analogous to the Sunday

---

[1]Schuman's studies at the Theocratic Ministry School were only part time, amounting to apparently one hour a week on Friday nights (92 File). Section 6(g) of the Universal Military Service & Training Act of 1948 provides for exemption for "students preparing for the ministry under the direction of recognized churches or religious organizations, who are satisfactorily pursuing *full time* courses of instruction in recognized theological or divinity schools." (Emphasis added.) The record is clear that Schuman does not fall within this class.

school teachers who instruct small groups before the regular service in many Protestant sects.

The conclusion that Verne G. Reusch is presiding minister of the San Francisco Mission District congregation and Schuman is not, is borne out by Schuman's answer to question 2(d) of his conscientious objector form 150 (73 File). There Schuman was asked the name, title and present address of the "pastor or leader of such church, congregation or meeting." In answer to this question Schuman listed "Verne G. Reusch, Company Servant, 2720 San Jose Avenue; San Francisco, California" (73 File).

This Court has cited *Martin v. United States,* 190 F.2d 775, for the proposition that Congress intended to exempt such persons as stand in the same relationship to the religious organizations of which they are members as do regularly ordained ministers of older and better known religious denominations. If Schuman were "presiding minister" of his congregation, he would fall within the rule enunciated by this and other Courts. Schuman, however, is not the shepherd, but is part of the flock. There is not only basis in fact for finding that he is not a presiding minister in any ordinary sense, but the evidence presented admits of no other conclusion.

Schuman had not given up secular work and studies.

This Court makes the statement that Schuman had given up all secular work and studies because they interfered with his religious studies. Schuman, to be

sure, made such a statement in his appearance before the local board. However, the Hearing Officer of the Department of Justice found that at the time of his hearing he was attending San Francisco City College (131 File). A statement implying that Schuman devoted all his time to religious activities is misleading and does not reflect the true facts.

Holding Schuman a minister is inconsistent with decisions of the Supreme Court.

The Court of Appeals bases its decision that the Selective Service System acted beyond its jurisdiction upon the following facts which appear in the Selective Service file:

(1) That Schuman had given up all secular work and studies.

(This statement does not correctly reflect the situation. The true fact is that Schuman was going to college and doing Jehovah's Witness work part time.)

(2) That Schuman's position was that of a "presiding minister".

(There is no evidence at all that Schuman was a "presiding minister". The only presiding he did was over a bible study group.)

(3) That Schuman gave lectures, performed marriages, and spoke at funerals.

In *Cox v. United States,* 332 U.S. 442, the Supreme Court developed, at page 444:

(1) That Petitioner Cox's "entire time was devoted to missionary work";

(2) That the file contained "an affidavit of a Company Servant, Cox's church superior * * * stating that Cox regularly and customarily serves as a minister by going from house to house and conducting bible studies and bible talks";

(3) That "he was enrolled in the 'Pioneer Service' * * *";

(4) That he averages 150 hours per month in ministerial duties;

(5) "As a minister * * * he preached from house to house, conducted funerals, and instructed the bible in homes."

The Supreme Court held under the Cox facts that the Selective Service Board was justified in deciding that Cox had not established his ministerial status.

Schuman is not a Pioneer as Cox was, nor does he devote 150 hours per month to ministerial duties. He does not devote his "entire time" to missionary work. He, along with Cox, conducts bible studies. The fact that Schuman *claims* to be a "presiding minister" of a bible study group cannot change the fact that his and Cox's position and activities were the same. Cox also conducted funerals. The only extra allegation in Schuman's case is that he can perform marriages. Cox, however, had a "Pioneer" classification, which Schuman did not, and Cox spent much more time in ministerial work.

In the *Cox* case other defendants also were petitioners. At page 445 to 446 the facts in petitioner *Thompson's* case were reviewed

(1) Thompson conducted "studies at the 'Local Kingdom Hall' ";

(2) "He was serving as assistant Company Servant";

(3) "He was a 'school instructor in a course in theocratic ministry' ";

(4) He served as "advertising servant and book study conductor".

Thompson was assistant to the presiding minister or "Company servant" of the Jehovah's Witness congregation where Schuman was merely the conductor of a bible study group within the congregation. In addition, Thompson was a Theocratic Ministry Instructor, while Schuman was merely a student in the Theocratic Ministry School. Thompson also did the work of advertising servant and book study conductor. The Supreme Court, nevertheless, held that Thompson had not as a matter of law, satisfied his burden of proving he was a minister.

Cox v. United States, 332 U.S. 442, approves as a "proper guide", the following test of the Selective Service System in determining whether or not Jehovah's Witnesses are ministers:

> "* * * 'whether or not they devote their lives in the furtherance of the beliefs of Jehovah's Witnesses, whether or not they perform functions which are normally performed by regular or duly ordained ministers of other religions, and, finally, whether or not they are regarded by other Jehovah's Witnesses in the same manner in which

> regular or duly ordained ministers of other religions are ordinarily regarded.' "
>
> *Cox v. United States, supra,* 450.

In Schuman's case the uncontradicted evidence establishes that he *is not* "regarded by other Jehovah's Witnesses in the same manner in which regular or duly ordained ministers of other religions are ordinarily regarded". To be sure, the evidence which bears upon this issue was supplied by Mr. Schuman. However, it cannot be contended that evidence favorable to the position of the Selective Service System must be rejected because supplied by the registrant. In addition, it cannot be maintained that the mere fact the Selective Service System did not conduct a judicial trial or present a "government case" automatically requires acquittal of the defendant.

The evidence establishes that Schuman belongs to the Mission District Congregation of Jehovah's Witnesses. The leader of that Mission Unit is Mr. Reusch. He, not Schuman, is regarded in the same manner as ministers of other religions. He, not Schuman, stands in the same relationship to the religious organization of which Schuman is a member as do regularly ordained ministers of older and better known religious denominations. The pastor, not a mere member of the congregation, is entitled to the ministerial exemption. *Sunal v. Large,* 157 F. 2d 165, 175. Schuman is a mere member of the congregation. The fact that all members of his church are ministers under the

rules of the church does not make him a minister under the Act. *Tyrrell v. U. S.,* 200 F. 2d 8, 13.

Congress said "final".

> "At the outset it is important to underline an important feature of this case. The Universal Military Training & Service Act does not permit direct judicial review of Selective Service classification orders. Rather the Act provides as the 1917 and 1940 conscription acts before it, that classification orders by Selective Service authorities shall be 'final.' "
>
> *Dickinson v. United States,* supra 4.

The discussion of the evidence in this case must be considered against the background of the Selective Service Act. Congress chose not to give administrative action under this Act the customary scope of judicial review which obtains under other statutes. Courts are not to weigh the evidence to determine whether the classification made by the local boards was justified. The decisions of the local board made in conformity with the regulations are final, even though they may be erroneous. The question of the jurisdiction of the local board is reached only if there is no basis in fact for the classification which it gave the registrant. *Estep v. United States,* 327 U.S. 114, 122-123; *Dickinson v. United States,* supra 4.

This Court in the Schuman case appears to be of the opinion that if there was any evidence before the Selective Service Board which would tend to

support the position the registrant takes, a Court must decide that the jurisdiction of the board was exceeded.

In the pages preceding this one, facts have been listed which logically and practically tend to prove that Schuman is not a minister under the Act. The *Dickinson* case does not and cannot mean that Courts must reject this evidence and accept the position of the registrant. If this were true, the "customary scope of judicial review" over administrative action would actually be far exceeded. The decisions of administrative boards are, generally speaking, upheld if there is substantial evidence to support them. Even in judicial trials favorable inferences are indulged in to support a verdict. The United States is convinced that the weight of the evidence is heavily in favor of the proposition that Schuman is not a "minister". However, the burden is not upon the United States. The law is unchanged that the only duty which is incumbent upon the United States is to show that the jurisdiction of the Selective Service System has not been exceeded. *Estep v. United States,* 327 U.S. 114; *Dickinson v. United States,* supra; *Cox v. United States,* supra.

Interpreted in this light, we have a case where an administrative board found that a registrant who admitted that another person was the presiding minister of the congregation to which he belonged, whose only claim to authority over others in his congregation consisted in conducting bible classes, and whose

duties as a minister occupied so little time as to allow him to pursue full time instruction at a college, was not entitled to a ministerial exemption. This Court has decided that this finding was beyond the jurisdiction of the local board. This decision seems to the United States to be clearly wrong.

Holding Schuman a minister is inconsistent with the Dickinson case.

A reading of the *Dickinson* case establishes that the defendant was:

(1) "A full time 'Pioneer' minister";

(2) "He devoted '150 hours' each month to religious efforts";

(3) "These activities began 'after February 1949 when selection under the Act was at a standstill, regular inductions having been halted' ";

(4) "He was 'company servant' or presiding minister of the Coalinga, California 'company' ";

(5) "He arranged for and presided over the meeting of the 'company' or congregation and usually delivered discourses at them";

(6) "He worked at secular tasks for a weekly average of only five hours."

Compare Dickinson's qualifications with Schuman's.

The Court of Appeals found that the following facts established that Schuman was a minister:

(1) That Schuman presided over a bible study group;

(2) That Schuman gave lectures, performed marriages and spoke at funerals;

(3) That Schuman studied philosophy at San Francisco City College.

It is to be noted that Schuman is not a Pioneer minister as Dickinson was. Schuman did not devote 150 hours each month to religious efforts. Schuman was not a company servant. Schuman was not a presiding minister of a company. Schuman did not arrange for or preside over the congregation. Schuman spent more than five hours a week in secular activity. Schuman became a minister only a month after the Korean war.

"A ministerial exemption as was pointed out in the Senate Report accompanying the 1948 Act 'is a narrow one intended for the *leaders* of the various religious faiths and not for the members generally.'" S. Rep. No. 1268, 80th Congress 2nd Sess. 13; *Dickinson v. United States,* supra 4. The evidence clearly establishes that Schuman is not a leader. His only claim of leadership consists in presiding over a bible study group. This he characterizes as "presiding minister" duty. This bible group is a subsidiary of the main congregation. The closest analogy to it would be a Sunday School class. This same activity can be found in prior Supreme Court cases to which the United States has drawn this Court's attention. See *Cox v. United States,* supra.

"Each registrant must satisfy the Act's rigid criteria for the exemption." *Dickinson v. United States,* supra 5. The ministerial exemption is a matter of legislative grace. "The Selective Service registrant bears the burden of clearly establishing a right to the exemption." *Dickinson v. United States,* supra 5. Schuman has not established a right to the exemption which he sought. He established that he engaged in religious activities for part of his time. He did not establish that he was a leader or presiding minister. He did not establish that other Jehovah's Witnesses regarded him in the same manner as members of other religious organizations regarded their ministers. Schuman was not a "Pioneer Minister" preaching 150 hours per month. "Preaching and teaching the principles of one sect, if performed part time or half time occasionally, or irregularly, are insufficient to bring a registrant under 6-G." *Dickinson v. United States,* supra 5. Schuman has established only that he was a full time college student who devoted part time to religious activity. His "customary vocation" was college student, not a minister.

It must be recognized that Selective Service must "be geared to meet the imperative needs of mobilization and national vigilance when there is no time for 'litigious interpretation.' " *United States v. Nugent,* 346 U.S. 1, 10.

In deciding whether this Court should reconsider its decision that Schuman is a minister under the

statute, we ask that each judge put himself in the position of a member of a draft board.

(1) Would he, if Schuman had appeared before him, find that Schuman had the vocation of a minister of religion?

(2) Under what circumstances can he, if the Schuman case remains the law, ever find that a boy who *claims* ministerial status, is not entitled to exemption from military service?

(3) What effect would conducting Selective Service classification, like trials in the United States District Court have on the functioning of the agency which has the responsibility of supplying this country's military force?

II.

SCHUMAN IS NOT A CONSCIENTIOUS OBJECTOR.

The Universal Military Service & Training Act gives exemption from service in the armed forces to those persons "who by reason of religious training and belief * * * [are] * * * conscientiously opposed to participation in war in any form." When a registrant claims to be exempt under this provision of the law, the board is faced with the problem of determining what is going on in the registrant's mind. Whether or not an individual is a minister can be determined upon the basis of observable facts. However, when the ultimate issue concerns a mental

phenomenon, a different and more complex task confronts the trier of the fact.

If a registrant repeats the words of the statute, what method can there be to prove that he does not fit within the exemption granted? The Selective Service Board has no machine which can probe the inside of a man's mind. It does not have the personnel, the time, or the funds to conduct extensive investigations into the history of the registrant to find statements inconsistent with those which the registrant makes at the time of his personal appearance. Classification is not a judicial trial. *U. S. v. Nugent,* supra. This Court cannot have intended to require a Selective Service Board to present a "government case".

This Court will not ordinarily upset the finding of a jury that a defendant had criminal intent. The reason behind this is that a Court of Appeals, with nothing but the cold record before it, does not feel competent to rule on a question which involves the examination of the state of mind of a defendant. Men form their beliefs in many ways. The objective manifestations of that belief are few and untrustworthy.

In examining this problem, the United States asks that the Court of Appeals consider for a moment what kind of evidence conceivably could refute an individual's assertion of a particular belief. If the defendant has at other times made statements contrary to his present position, this will probably be relevant evidence. However, if he says he has changed

his mind, how can he be refuted? Consider also the enormous expense involved in investigating an individual's previous statements of philosophy. Consider also the delay which such a procedure would involve.

This Court has held that the length of time one has been connected with a faith *has no bearing* upon whether one is entitled to exemption as a conscientious objector. If a board cannot consider the length of time an individual has claimed a belief, what other evidence can it utilize? One answer would be the manner of his testimony. However, if the Courts require "affirmative evidence" of lack of conscientious scruples, how is a board member to show his mistrust in the record? Certainly a description of the physical manifestations which comprise the manner of the registrant would not influence this Court. A listing of such things as "a shady look in the eyes", "a halting method of speaking", a "too-glib recitation of belief", would be considered by this Court to be suspicion and speculation.

The Dickinson case does not apply.

When faced with determining the beliefs of a registrant concerning the use of force, the Selective Service Board has a different problem than when it seeks to decide whether he is a minister. The *Dickinson* case, while it involves a Jehovah's Witness, is not concerned with the problem of exemption under 6-J of the Universal Military Training & Service Act. It makes no ruling on what kind of evidence can be utilized by the board in finding that a registrant is or

is not conscientiously opposed to war. It rules only on the exemption under 6-G of the Act. The problems are different, we hope that the Court of Appeals will change its decision that the rule is the same.

When faced with the issue of claimed sincerity, the Selective Service System must have the right to disbelieve. If the only evidence in the record is a simple statement that the registrant is sincerely opposed to war, the Selective Service System cannot be precluded from finding, if it so believes, that the registrant had not established the sincerity required by the statute. If the ministerial exemption is "narrow and rigorous", the conscientious objector exemption is even more so. This Court had previously held that demeanor of the witness and his sincerity and candor is a matter for the trial tribunal. *Ashton v. Seatney* (9th Cir.), 145 F. 2d 719. The Supreme Court recognizes that where a decision is based upon motives and purposes, the evidence of which depends largely upon the credibility of witnesses, a particularly appropriate case is made for upholding the trier of the fact. *United States v. Oregon Medical Society,* 343 U.S. 326, 332.

Affirmative evidence is present.

The Department of Justice made a finding in the Schuman case as did the Local Board that the registrant failed to establish that his objections to service were based upon conscientious convictions arising out of religious training and belief (129, 98 File).

The evidence which supports this determination and that of the Appeal Board which actually has the power of decision[2] is:

(1) Schuman began studies of religion only two months after receiving his Selective Service classification questionnaire (4, 15 File).

(2) He claimed exemption from service for the first time shortly after the outbreak of the Korean War (17 File).

(3) He gave a lecture apparently in favor of the war to end all wars (119 File).

(4) He became a Jehovah's Witness only as a compromise of religions with his girl friend, not because of his beliefs regarding force or any devotion to its principles (131 File).

(5) He did not claim conscientious objector classification until July 24, 1951 (15 File). Before that date his only claim for exemption was as a minister[3] (74 File).

(6) The only evidence presented of Schuman's conscientious objection is his own statements in his

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[2]The Appeal Board is not bound by an ambiguous statement of the Hearing Officer of the Department of Justice, if there is evidence in the file which justifies the classification given. *Reed v. United States* (9th Cir.), 205 F. 2d 216; *Knox v. United States* (9th Cir.), 200 F. 2d 398; *Cramer v. France* (9th Cir.), 148 F. 2d 801.

[3]Prior to that time he applied for exemption as a minister, but not as a conscientious objector, on August 14, 1950 (15 File); November 9, 1950 (17 File); January 29, 1951 (22 File), and April 4, 1951 (39 File).

conscientious objector form and his statements in his personal appearance before his second Local Board (Local Board 38).

Can the Court of Appeals hold that a determination upon this evidence was beyond the jurisdiction of the Selective Service authorities?

Examination of the file in this case shows that Schuman presented voluminous evidence tending to support his claim that he was a minister. However, he presented no affidavits or statements from others supporting his claimed beliefs against force. All the evidence which bears on this question consists in statements made by him. The Appeal Board was presented with a case where the registrant said simply he would not fight or serve in the Army, and who said he did so because of religious conviction garnered from teachings of the Jehovah's Witnesses sect. However, he presented no statement from others that the creed of this sect required a conscientious objector stand.

The Appeal Board could believe that Schuman acquired his religion merely as a compromise with his girl friend. It could infer that the claim of objection so closely following the Korean War was motivated by it. The Local Board and the Hearing Officer of the Department of Justice both found that the registrant had not sustained his burden of proving conscientious objection. That finding was based in part upon the demeanor of the registrant. The Appeal Board had the right to consider that since both these tribunals denied Schuman his exemption, they disbelieved his

statement that he was opposed to war in any form on the grounds of religious training and belief. The statement which the Court of Appeals makes that the Local Board did not question the registrant's sincerity is misleading. The quoted statement appears during a discussion of Schuman's ministerial exemption. In the portion of the transcript in which the Local Board interrogated the defendant concerning his conscientious belief, no such statement appears. There is a great difference between finding a person religious and finding that he is conscientiously opposed to war in any form. Catholics, Protestants and Jews can be fervently religious and yet serve in the armed forces. After cross-examining the registrant as to his beliefs concerning force, the Local Board denied classification as a conscientious objector (97, 98 File).

Reading this portion of the transcript of Schuman's personal appearance, it is obvious that the Local Board, despite Schuman's protestations, did not believe he was a sincere *conscientious objector* and the Appeal Board, on the basis of the evidence in the file, could disbelieve the registrant's sincerity and classify him 1-A.

Schuman has not satisfied his burden.

The United States asks that this Court examine the facts developed in this discussion. Would this Court, if it were sitting as a Draft Board, find that Schuman had satisfied *his burden* of proving he was a conscientious objector? We feel sure that each individual on this Court would require more than a simple affirma-

tion of belief to grant exemption from service. Schuman could have presented affidavits concerning his beliefs about force. He could have presented statements from others as to whether he had given public expression to his views on force. We ask the Court of Appeals to examine his answers to questions concerning the objective manifestations of his belief. In answer to Question 6 in his conscientious objector form, "Have you ever given public expression, written or oral, to the views herein expressed?", Schuman answered that he was immersed at a circuit assembly of Jehovah's Witnesses. In other words, instead of showing or alleging that he had expressed at other times opposition to war, he merely repeated his claim that he was an ordained minister.

No claim can be made that the United States must submit evidence when the registrant himself has not established facts sufficient to justify his sincerity. This we believe is the case with Schuman. If this petition for rehearing is not granted, the law in the Ninth Circuit will be that if a registrant makes a simple statement that he is a conscientious objector, the Selective Service System must so classify him. This we submit cannot have been the intention of Congress. The decisions of this Court and of the Court above are unanimous that classification is not a judicial trial. The Court of Appeals cannot have intended to require the Selective Service System to present a "government case." With a record such as this one, the inference can be easily drawn that Schuman had not any more sincere opposition to war than has any other religious

young American. The Universal Military Training & Service Act and the decisions of the Courts require that if such an inference can be drawn, the Selective Service system has not acted beyond its jurisdiction in refusing a classification. *Corn Products Co. v. Comm.,* 324 U.S. 726, 734; *Tennant v. Peoria & P. U. Ry. Co.,* 321 U.S. 29, 35.

III.

CONCLUSION.

It is almost two months since the decision in the *Dickinson* case. There has been time to reexamine the principles there involved and to absorb those principles into the context of the statute and prior cases. The United States feels confident that, placed in its proper context, the decision in the *Dickinson* case does not control here. It asks, therefore, that the Court of Appeals grant a rehearing so that the judgment of the District Court may be upheld.

Dated, San Francisco, California,
January 20, 1954.

Lloyd H. Burke,
United States Attorney,
Richard H. Foster,
Assistant United States Attorney,
Attorneys for Appellee and Petitioner.

Certificate of Counsel.

Lloyd H. Burke and Richard H. Foster, counsel for petitioner, certify that in their judgment the foregoing petition is well founded and is not interposed for delay.

Dated, San Francisco, California,
January 20, 1954.

Lloyd H. Burke,
United States Attorney,
Richard H. Foster,
Assistant United States Attorney,
Attorneys for Appellee and Petitioner.